

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NOS. 49 AND 50 OF
2004.

CRIMINAL MISCELLANEOUS APPLICATION NO. 49 OF 2004.

Mr. Karnail Singh,
permanent resident of Indore,
presently lodged in Judicial
Custody, Mapusa, Goa.

... Applicant.

Versus

State of Goa.

... Respondent.

CRIMINAL MISCELLANEOUS APPLICATION NO. 50 OF 2004.

Mr. Swarna Singh,
permanent resident of Abadal,
Araspur, District Jammu,
presently lodged in Judicial
Custody, Mapusa, Goa.

... Applicant.

Versus

State of Goa.

... Respondent.

Mr. Arun Bras De Sa, Advocate for the Applicant in both
matters.

Mr. S.N. Sardessai, Public Prosecutor for the
Respondent/State.

Coram : P.V. HARDAS, J.

Date : 27th February 2004.

ORAL ORDER.

These applications at the instance of the
applicants who are accused in Crime No. 5/03, under
Sections 468, 471, 420, 511 read with 34 of the Indian
Penal Code, can be disposed of by this common Order.

2. The applicant in Criminal Miscellaneous
Application No. 50 of 2004 had been in police custody

from 7th January 2004 and since 19th January 2004 is in judicial custody. The applicant in Criminal Miscellaneous Application No. 49 of 2004 was in police custody from 16th January 2004 and since 19th January 2004 is in judicial custody.

3. Applicant in Criminal Miscellaneous Application No. 50 of 2004 is the driver and the applicant in Criminal Miscellaneous Application No. 49 of 2004 is the cleaner of a Tanker bearing No. MH-18-M/0143, which was to deliver a consignment at Goa. The allegation of the prosecution is that these applicants, with common intention, forged contract carriage permits by mentioning two different carriage numbers and also in the goods consignment note by mentioning fake consignment of 11290 M.P. "formale Dehyde" and transported around 10,000 bulk litres of alcohol in the fake name of consignee M/s. Balaji Trading Company Pvt. Ltd., Karnataka. The tanker, as per the records of the R.T.O. stands registered in the name of Santosh Ramlal, resident of Dhule. However, the person was found to be not connected with this transaction. It also appears that the investigation in respect of the said crime is in progress.

4. The applications for bail filed by the present applicants before the Judicial Magistrate, First Class,

Pernem, came to be rejected by the Order of the learned Magistrate, dated 21st January 2004. Apparently bail was refused precisely on the ground that the applicants are not residents of Goa. The applicants then filed bail applications before the Assistant Sessions Judge, North Goa, Panaji, who, by Order, dated 3rd February 2004, rejected the bail applications. The applicants thereafter moved the Ist Additional Sessions Judge, Panaji, by filing Bail Application Nos. 55 and 56 of 2004, which also came to be rejected by the common Order, dated 13th February 2004. While rejecting their bail applications, the learned Ist Additional Sessions Judge, Panaji, found that the progress of the investigation would be seriously hampered if the applicants/accused are released on bail as they would get a chance to destroy or cause to destroy material evidence. The learned Ist Additional Sessions Judge, Panaji, also found that since the applicants were not residents of Goa and their complete addresses were not known, releasing them on bail would not be advisable as there was a strong likelihood of the accused jumping bail.

5. The applicants/accused have been charged for offences, none of which is punishable with either imprisonment for life or death. All the offences are triable by a Magistrate. The offence under Section 468

of the Indian Penal Code is punishable with imprisonment of 7 years and fine and is a non-bailable offence. The offence under Section 471 of the Indian Penal Code is also punishable with imprisonment for 7 years and fine but is a bailable offence. The offence under Section 420 of the Indian Penal Code attracts a sentence of imprisonment of 7 years and fine and is a non-bailable offence. The punishment in respect of the offence under Section 511 of the Indian Penal Code would depend upon the offence to be committed. Admittedly all the offences are triable by a Magistrate.

6. Section 437(1) of the Code of Criminal Procedure provides that when any person accused of, or suspected of committing any non-bailable offence is brought before the Court, the Court may release the said accused on bail unless his case falls in the two conditions set out in Sub-Section (1) of Section 437. It is not disputed before me that the case of either of the applicants would fall within the two conditions set out in Sub-Section (1) of Section 437. Thus, ordinarily the accused would be entitled to be released on bail by the Magistrate. The bail of the applicants has been denied and what has weighed with the Courts below are the facts that the applicants/accused are not residents of Goa and that their permanent addresses are not complete. Bail ought not to have been denied on the

ground that the accused are not permanent residents of Goa. While granting bail, the Court has to ensure the availability of the accused for the trial. But, that does not mean that bail has to be denied on the ground that the accused are not residents of the State/District where the Court is situated. The Courts are not helpless in imposing conditions which would allay the apprehensions of the prosecution that the accused would jump bail. Imposition of certain conditions would ensure the presence of the accused during the trial and should be imposed in appropriate cases while granting bail. The question of liberty of a citizen has to be balanced with the need of the prosecution for the presence of the accused at the trial. Rejection of the bail application solely on the ground that as the accused are not the residents of the State and they are likely to jump bail is, according to me, not proper, particularly in the face of the factual matrix of the present case that the offences are triable by the Magistrate. In the present case there does not appear to be any likelihood of a charge-sheet being filed immediately and the case being disposed of within a reasonable time. In the background of all these facts, therefore, according to me, the Court ought to have granted bail to the applicants/accused.

7. It is true that the applicants/accused are not

residents of Goa in the sense that they have no permanent roots in Goa. It is equally true that the possibility that the accused might jump bail cannot be ruled out. In order to effectively ensure the presence of the accused at the trial, according to me, the imposition of the certain conditions would serve the purpose.

8. Accordingly the applicants/accused be released on bail on each of the applicants furnishing a personal bond in the sum of Rs. 20,000/- with one local surety in the like amount to the satisfaction of the trial Court on the following conditions:-

(1) The applicants/accused shall furnish their permanent addresses to the Police and the trial Court and furnish proof thereof. The proof of the permanent addresses be furnished within a period of two weeks from the date of their release.

(2) On such addresses being furnished, the Investigating Officer to verify the fact from the concerned Police Station and report compliance to the Court.

(3) The applicants/accused shall not leave Goa for a period of three weeks from the date of their

release and shall be available to the Investigating Officer as and when required for the purpose of investigation. During this period of three weeks, the applicants/accused shall report to the Investigating Officer on every alternate day from 9.00 to 11.00 a.m. and at such other time as the Investigating Officer may require their presence.

(4) After expiry of the three weeks, the applicants/accused shall inform the Court if they desire to leave Goa and shall give in writing the addresses at which the applicants would be available. Till the conclusion of the trial the applicants/accused shall report their presence at the nearest police station where they reside once a month on the first Monday of the month. The Investigating Officer is to verify periodically whether the applicants have been reporting at the concerned Police Station and to inform the Court immediately in case the applicants omit to comply with this condition.

(5) The applicants/accused shall attend the Pernem Police Station till the filing of the charge-sheet, as and when required by the Investigating Officer or the Court.

(6) The applicants/accused shall not, directly

or indirectly, influence or attempt to influence any witnesses nor shall they tamper with the evidence.

9. On the above conditions, the Criminal Miscellaneous Applications are allowed. Copy duly authenticated by the Court Sheristedar be given to the parties.

(P.V. HARDAS)
JUDGE.

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